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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3425 OF 2005

Smt.Nirmala Suresh Sonawane Petitioner
versus
Sanjay Sampat Waghchure and ors. Respondents

Mr.R.N.Gaonkar for petitioner.

CORAM : A.S.OKA, J.

DATE : 05th April 2007

PC :

1. Heard advocate for the petitioner. Office noting shows that the respondents are served. The petitioner is the claimant in a claim petition filed under section 166 of the Motor Vehicles Act, 1988. The claim petition filed by the petitioner was dismissed for default on 6th March 2002. In July 2004, the petitioner applied for restoration of the claim petition along with an application for condonation of delay. The learned Member of the Tribunal has dismissed the application for condonation of delay.

2. I have heard the submissions of the advocate

for the petitioner. The Roznama of the claim petition shows that on 28th November 1999 the claim petition was transferred to sine-die list. After the petition was taken on regular board, notice was served to the petitioner. After service of notice, the petitioner did not appear and therefore, the claim petition was dismissed for default.

3. The petitioner is a Labourer by occupation. The petitioner had engaged services of an Advocate. Apart from the fact that the petitioner did not appear before the Tribunal, even the lawyer appointed by the petitioner did not appear. In fact, the stand of respondent no.3 before the Tribunal was that on the notice board a list of matters transferred from sine-die list was published and the members of bar were aware about the said list. The learned Member of the Tribunal should have adopted a sympathetic approach considering the fact that the petitioner claims to be a victim of an accident and has suffered serious injuries in the accident. In my view, the learned Member was not justified in adopting hypertechnical view of the matter. The delay in filing the application deserves to be condoned. The claim petition also deserves to be

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restored. Hence, I pass the following order.

4. ORDER :-

(a) The impugned judgement and order dated 15th March 2005 is quashed and set aside;

(b) The claim petition is restored to the file;

(c) The Tribunal to issue notice to the concerned parties of the date fixed in the claim petition.

(A.S.OKA, J.)